

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1085 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ISHAK MAHMAD HAJIYA @ MOTO DADIYO

Versus

DISTRICT MAGISTRATE

Appearance:

MR MA KHARADI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/04/2000

ORAL JUDGEMENT

1. District Magistrate, Panchmahals, at Godhra,
passed an order on September 3, 1999, in exercise of
powers under Section 3(1) of the Gujarat Prevention of
Anti-Social Activities Act, 1985 ("PASA Act" for short),
detaining the petitioner-Ishak Mahmad Hajiya alias Moto

Dadiyo of Godhra under the provisions of the said Act.

2. The authority considered five offences registered against the detenu besides statements of four anonymous witnesses and came to conclusion that the detenu is required to be immediately prevented from pursuing his activities which are detrimental to public order. The authority found that the activities of the detenu are that of dangerous person and it is not possible to resort to ordinary law as he is required to be immediately prevented from pursuing his activities.

3. The detenu challenges the order of detention on various counts. However, Mr. Kharadi, learned advocate appearing for the petitioner submitted that there is improper exercise of powers under Section 9(2) of the PASA Act. Statements of witnesses have not been properly verified by the detaining authority and, therefore, the exercise of powers under section 9(2) are improper. This improper exercise of powers has affected the right of the detenu of making an effective representation.

3.1 Another argument advanced by Mr. Kharadi is that the offences registered against the detenu and relied upon by the detaining authority do not indicate, in any manner, any disturbance to public order. At the most, they indicate a problem of law and order and, therefore, the subjective satisfaction arrived at by the detaining authority that the activities of the detenu are detrimental to public order cannot be considered as genuine. The petition, therefore, may be allowed and the order of detention may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, after considering all relevant aspects and recording subjective satisfaction, the detaining authority has passed the order.

5. If the grounds of detention are seen, they indicate that the detaining authority has relied upon statements of four anonymous witnesses. A perusal of the order and the copies of the statements indicate that there is substance in the arguments advanced by Mr. Kharadi. The statements of anonymous witnesses have been verified by Dy.S.P. and Sub-Divisional Magistrate, but not by the detaining authority. The detaining authority has stated in the grounds of detention that the statements have been verified by Dy.S.P. and Sub-Divisional Magistrate and he agrees with the verification. The language employed does not indicate

that the statements have been personally verified by the detaining authority. The satisfaction recorded by the detaining authority is, therefore, not based on personal/subjective verification or satisfaction nor on other contemporaneous material. The authority is expected to satisfy itself about the correctness and genuineness of the incidents narrated by the witnesses and the fear expressed by them qua the detenu. Thereafter, the authority is required to weigh the interest of the detenu of making an effective representation on one hand and the right of claiming privilege under Section 9(2) in public interest on the other hand and, thereafter, if the authority finds that it is in public interest to exercise powers under Section 9(2), the authority may do so. In the instant case, no such observation is there. There is nothing to indicate that the statements have been verified by the detaining authority. There is no communication between the Dy.S.P. or the Sub-Divisional Magistrate, on the one hand, and the District Magistrate, on the other hand. There is nothing to indicate that the verifications made by the Dy.S.P. and the Sub-Divisional Magistrate were at the instance of the detaining authority. There is nothing to indicate that any report is made by the Sub-Divisional Magistrate to the detaining authority on his satisfaction about the correctness and genuineness. If the verifications made by the Dy.S.P. and the Sub-Divisional Magistrate are seen, they are more or less reiteration of the principal statements. Whether the fear expressed is genuine or not cannot be considered subjectively on basis of such statements. Thus, there is improper exercise of powers under Section 9(2) of the PASA Act, which can be said to have infringed right of the detenu of making an effective representation.

6. Besides this, another aspect that requires to be considered is that the offences registered against the detenu cannot be considered to have disturbed the public order. Even while going through the papers, it is clear that the disputes were individual in nature and there was no disturbance to public order. As such, it can be said to be a question of law and order rather than public order.

7. In view of the above discussion, it cannot be said that the subjective satisfaction recorded by the authority that the activities of the detenu are detrimental to public order and, therefore, he is required to be detained under the PASA Act cannot be considered as genuine. This would adversely affect the order of detention. The petition, therefore, deserves to

be allowed.

8. In the result, the petition is allowed. The impugned order of detention dated September 3, 1999, passed against the detenu is hereby quashed. The detenu-Ishak Mahmad Hajiya alias Moto Dadiyo is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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